

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**



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Order Instituting Investigation on the  
Commission's Own Motion into the Rates,  
Operations, Practices, Services and Facilities of  
Southern California Edison Company and San  
Diego Gas and Electric Company Associated  
with the San Onofre Nuclear Generating Station  
Units 2 and 3

Investigation 12-10-013  
(Filed October 25, 2013)

And Related Matters

Application 13-01-016  
Application 13-03-005  
Application 13-03-013  
Application 13-03-014

**CALIFORNIA LARGE ENERGY CONSUMERS ASSOCIATION, DIRECT ACCESS  
CUSTOMER COALITION, AND WOMEN'S ENERGY MATTERS'  
POSITION AND RECOMMENDATIONS FOR MOVING FORWARD**

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Pursuant to the December 13, 2016 Joint Ruling of Assigned Commissioner and  
Assigned Administrative Law Judge Directing Parties to Provide Additional  
Recommendations for Further Procedural Actions and Substantive Modifications to  
Decision 14-11-040 (December 13, 2016 Joint Ruling), as modified by the May 26, 2017  
Administrative Law Judge's Ruling Granting Motion of the Meet and Confer Parties to  
Extend Dates for All-Party Meet and Confers, and Request Additional Information from  
Utilities, the California Large Energy Consumers Association (CLECA)<sup>1</sup>, Direct Access

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<sup>1</sup> CLECA is an ad hoc organization of large, high load factor industrial customers of  
Southern California Edison Company and Pacific Gas and Electric Company; the members are  
in the cement, steel, industrial gas, pipeline, beverage and mining industries. CLECA has been  
an active participant in Commission regulatory proceedings since 1987; some members take  
bundled service, some take Direct Access service, and some may be served by Community  
Choice Aggregators. For all CLECA members, the cost of electricity is a significant factor in the

Customer Coalition (DACC)<sup>2</sup>, and Women's Energy Matters (WEM)<sup>3</sup> respectfully submit this summary of their positions and recommendations for further procedural actions by the California Public Utilities Commission (Commission).

## **I. INTRODUCTION**

The extensive meet-and-confer discussions, multiple mediation sessions, and good faith negotiations by ratepayer groups and non-utility stakeholders, Southern California Edison Company (SCE) and San Diego Gas & Electric Company (SDG&E) have not led to a proposed settlement, despite the parties' and mediators' efforts. Disappointingly, the foundational differences between the ratepayers and the utilities appear to require resolution through litigation, rather than negotiation. CLECA, DACC, and WEM have worked to coordinate our positions and recommendations for moving forward with fellow ratepayer groups and other non-utility stakeholders; CLECA, DACC and WEM are committed to continued, close coordination with these groups to promote an efficient and fair resolution for all ratepayers.

## **II. POSITION AND RECOMMENDATIONS FOR MOVING FORWARD**

### **A. All Significant Developments Must Be Considered**

The revelation of SCE's misdeeds changed the context for the determination of the reasonableness of the prior settlement agreement and the utility actions regarding

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cost of producing their product or service, impacting the national or international competitiveness of their product or service.

<sup>2</sup> DACC is a regulatory alliance of educational, governmental, commercial and industrial customers that utilize direct access ("DA") for all or a portion of their electrical demand. In the aggregate, DACC member companies represent over 1,900 MW of demand that is met by both direct access and bundled utility service and about 11,500 GWH of statewide annual usage.

<sup>3</sup> WEM is a non-profit advocacy group that has participated in proceedings at the CPUC since 1997. WEM's mission is to promote sustainable energy policies, advocating for transition from nuclear and fossil fuel energy sources to energy efficiency and renewables.

SONGS; other developments must also be considered as the Commission determines the appropriate course going forward. These include the December 13, 2016 Joint Ruling, the heightened interest of non-settling parties (including CLECA, DACC and WEM), the Mitsubishi Arbitration Award, and the failure to date by SCE to sell any of its nuclear fuel.

Notably, the December 13, 2016 Joint Ruling states plainly, “the benchmark for today is not the parties’ former litigation positions.”<sup>4</sup> It emphasizes, “[w]e also do not want to affirm a result that rewards the Utilities for violations that undermine the integrity of the Commission process.”<sup>5</sup> (The Commission in December 2015 found SCE and its executive Mr. Pickett “grossly negligent”<sup>6</sup> and stated that the public and the Commission’s process were “severely harmed” by the utility’s unlawful ex parte communications.<sup>7</sup>) From a ratepayer perspective, the December 13, 2016 Joint Ruling is clear:

We cannot go back in time and reconstruct parties’ strategic thought process, nor can we predict what changes or outcomes would occur from future litigation. What we do know is Edison had an obligation to inform the parties of the ex parte communications within three days of the occurrence and failed to do so for almost two years. This left other parties deprived of information at a critical point in the proceeding. This information inequality disadvantaged ratepayer advocates in negotiation and assessment of litigation options, which in turn harmed ratepayers.<sup>8</sup>

In December 2015, the Commission concluded that it did not yet “need to determine the impact of the Rule 8.4 violations, if any, on the settlement negotiations or the final

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<sup>4</sup> Joint Ruling of Assigned Commissioner and Administrative Law Judge, December 13, 2016, I.12-10-013, p. 35 (emphasis added).

<sup>5</sup> Ibid.

<sup>6</sup> D.15-12-016, p. 51.

<sup>7</sup> Ibid., p. 41.

<sup>8</sup> Joint Ruling of Assigned Commissioner and Administrative Law Judge, December 13, 2016, I.12-10-013, page 33.

decision adopted in the SONGS proceedings because these issues have been raised in pending Petitions for Modification.”<sup>9</sup>

A year later, however, the Assigned Commissioner and Administrative Law Judge determined that with the unlawful *ex parte* communications, “Edison tipped the balance of negotiations in its favor and in the favor of its shareholders.”<sup>10</sup> These decision-makers found:

Despite the Utilities’ assertion that the Agreement remains reasonable regardless of Edison’s failure to comply with the Commission rules, **the Commission now has to consider more than what the record reflected at the time it adopted D. 14-11-070.** Because of the substantive and specific nature of the *ex parte* between Edison and then President Peevey (a decision-maker), **Edison’s failure to provide timely notification of the ex parte communications affected the proceeding litigation, and review of the Settlement.**<sup>11</sup>

The Commission has confirmed time and again that, in this matter, ratepayers will not be further disadvantaged should this be re-opened for litigation.<sup>12</sup>

The record has been reopened;<sup>13</sup> it must now be expanded. Parties have changed their positions on the settlement. Prior statements of support that pre-date the December 13, 2016 Joint Ruling cannot be considered reliable proof of the settlement’s reasonable; such prior statements are less relevant today. Both TURN and ORA have

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<sup>9</sup> D.15-12-016, page 41. Notably, the Commission did find that “the Rule violations resulting from SCE’s actions and omissions in these proceedings have *severely harmed* the public’s confidence in the Commission, and the integrity of the regulatory process.” Ibid (emphasis added).

<sup>10</sup> Joint Ruling of Assigned Commissioner and Administrative Law Judge, December 13, 2016, I.12-10-013, page 33.

<sup>11</sup> Ibid, page 28 (emphasis added).

<sup>12</sup> Ibid, page 33.

<sup>13</sup> Joint Ruling of Assigned Commissioner and Administrative Law Judge, May 9, 2016, I.12-10-013, page 5.

withdrawn their prior support for it.<sup>14</sup> Critically, TURN explained that in the prior record underlying the settlement, it had not taken a litigation position on future Phase 3 issues and always retained the right to seek a range of possible refunds for ratepayers based on the failure of the Replacement Steam Generator project.<sup>15</sup> Ruth Hendricks asserted without a reasonableness review it cannot be determined whether the Settlement leads to just and reasonable rates.<sup>16</sup> CLECA and DACC, while never parties to the Settlement, likewise no longer support it. WEM never supported the Settlement, and continues to oppose it, in light of the harm done to ratepayers by the illegal ex partes, the mismanaged MHI litigation, and new revelations regarding SCE's nonpursuit of NEIL property damage claims.

SCE and SDG&E have acknowledged that the Commission maintains the legal authority to modify the settlement.<sup>17</sup> CLECA, DACC, and WEM posit that the December 13, 2016 Joint Ruling, the changed settling parties' positions, the heightened interest of non-settling, actively-engaged parties, the meager MHI arbitration award, including exorbitant litigation costs to be borne by ratepayers, are important factors to be considered by the Commission.

CLECA, DACC and WEM expressly support the discussion of the impact of the "MHI Arbitration Fiasco" and "Unmarketed Nuclear Fuel" in the Alliance for Nuclear

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<sup>14</sup> Joint Ruling of Assigned Commissioner and Administrative Law Judge, December 13, 2016, I.12-10-013, page 15.

<sup>15</sup> Joint Ruling of Assigned Commissioner and Administrative Law Judge, December 13, 2016, I.12-10-013, page 25.

<sup>16</sup> *Ibid*, page 26.

<sup>17</sup> February 28, 2017 Response of SCE and SDG&E to the Coalition to Decommission San Onofre's Motion to Stay D.14-11-040 and Its Implementation, p. 3.

## **B. Recommendation for Moving Forward: Set Aside the Settlement**

The Commission has two options for moving forward: either set aside the prior settlement and re-open the proceedings, or modify the prior settlement based on a combination of new testimony, comments and briefing. CLECA, DACC and WEM recommend the first option, but could also support the second option. Critically, regardless of the option chosen by the Commission, the Commission should immediately suspend the authority of SCE and SDG&E to continue collections for the SONGS regulatory asset in customer rates until the entire case is resolved. CLECA, DACC and WEM understand that other ratepayer advocates will propose similar procedural options, as well as supporting an immediate suspension of the authority to collect revenues in rates for the SONGS regulatory asset.

### **1. Option 1**

First, the Commission should set aside the prior settlement. Second, the Commission should issue the long-delayed Phase 1 Proposed Decision (PD) that addressed 2012 Operation and Maintenance and replacement power costs. Third, the Commission should proceed with the Phase 2 PD that was already briefed. Fourth, the Commission should initiate Phase 3 and determine the shareholder consequences for the failure of the Steam Generator project. CLECA, DACC and WEM also support A4NR's requested timing for the Phase 3 pre-hearing conference.

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<sup>18</sup> Our current silence on the A4NR's discussion of the abandonment of NEIL property damage claims and recent corroboration by Michael Peevey should not be taken as a lack of support.

## **2. Option 2**

Alternatively, the Commission should consider modifications to the previously adopted settlement and set a schedule for testimony, comments, and briefing. The following list of potential modifications could be made to the settlement to rehabilitate it; all of these modifications should be considered if the Commission elects option 2:

- Imposition of shareholder consequences for a variety of monetary damages caused by the failure of the replacement steam generator project;
- Disallowance of some or all of the capital investment in base plant;
- Refund of replacement steam generator costs collected from customers prior to February 1, 2012;
- Elimination of any return on debt or preferred stock for base plant;
- Refund any unreasonable 2012 operating expenses;
- Refund of lost revenues from foregone sales of electricity from SONGS in 2012-2013;
- Credit to ratepayers for the book value of the unsold nuclear fuel;
- Disallow recovery of nuclear fuel contract cancellation costs; and
- Credit ratepayers with the gross Mitsubishi Heavy Industries arbitration proceeds (shareholders to pay all litigation costs).

Some of these potential modifications were included in the December 13, 2016 Joint Ruling.<sup>19</sup>

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<sup>19</sup> Joint Ruling of Assigned Commissioner and Assigned Administrative Law Judge, December 13, 2016, I.12-10-013, at 38.

### **III. CONCLUSION**

CLECA, DACC and WEM appreciate this opportunity to explain our joint position and offer procedural recommendations for moving forward.

Respectfully submitted,



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California Large Energy Consumers Association

And on behalf of the Direct Access Customer Coalition

And on behalf of Women's Energy Matters

August 15, 2017